STRAITS SETTLEMENTS REPORTS.

PUBLISHED BY AUTHORITY

[ORIGINAL CIVIL JURISDICTION]

TERRELL, J.A.

February 27, 1941.

ARJAN SINGH, SON OF INDER SINGH

vs.

HASHIM ANGULLIA & ORS.

[SINGAPORE CIVIL SUIT No. 38 of 1941]

Moneylenders Ordinance (Cap. 218) S. 9 sub. s. 1—Accounts under S. 7 to be produced when suing in Court—Effect of non-compliance.

When a moneylender sues upon a moneylending contract, a statement of his account as prescribed in S. 7 of the Moneylenders Ordinance must be produced at the time of suing and particulars should accordingly be filed with the Writ of Summons. Non-compliance with this statutory requirement is an irregularity which the Court cannot waive and will entitle a defendant to have the Writ of Summons set aside with costs. If the description of the plaintiff is omitted from the Writ of Summons (in breach of Order II rule 4) this is an irregularity which might be waived on terms in a proper case.

Cases referred to:—

(1) *In re Tan Keng Tin & In re Chop Soon Bee,* (1933) S.S.L.R. p. 360 at p. 363.

(2) *Rex v. Cheong Koon Seng,* (1939) S.S.L.R. at pp. 235 and 236.

SUMMONS.

A. Yellappa for plaintiff.

S. B. Aditan for 1st defendant.

John Laycock for 2nd defendant.

The facts and arguments sufficiently appear from the judgment.

Cur. Adv. Vult.

Terrell, J.A.—These were applications by the first and second defendants to set aside the writ of summons.

The grounds of objection were in each case the same and were as follows:—

(a) that the said Writ does not specify the description of the Plaintiff as required by Order 2 Rule 4 of the Rules of the Supreme Court, 1934;

(b) that the Plaintiff, being a moneylender, did not produce a statement of his account as required by Section 9 of the Moneylenders Ordinance (Chapter 218);

(c) that the Plaintiff, being a moneylender, did not state by indorsement on the Writ the particulars required by Order 3 Rule 10 of the Rules of the Supreme Court of Judicature in England, which said Rules are to be followed and adopted in this Honourable Court by virtue of the preliminary rules under the Rules of the Supreme Court, 1934.

As regards the first objection, there is no doubt that the writ is irregular, if the description of the plaintiff is not given (Order 2 Rule 4). The local rule is different in this respect from the English rule. As, however, it is merely non-compliance with a rule of procedure, the matter could have been dealt with under Order 63 rule 1, and the writ amended on payment of costs.

The second objection was of a different character. Section 9 (1) of the Moneylenders Ordinance (Cap. 218) reads as follows:—

> "Where proceedings are taken in any court by a moneylender for the recovery of any money lent on or after the first day of January, 1936, or the enforcement of any agreement or security made or taken on or after the aforesaid date, he shall produce a statement of his account as prescribed in section 7."

The subsection refers back to section 7 (i) which prescribes the information which the moneylender is required to supply upon a demand in writing. The particulars required to be supplied include, *inter alia,* the date of the loan (section 7 (1) (a)). Admittedly the indorsement on the writ gives the date of the promissory note, but not the date of the loan. The defect, therefore, is one of substance. The only question of difficulty is whether under section 9 (1) the particulars have to be given when the writ is issued, or can be supplied at any time before trial. It appears to me that the particulars are necessary to enable the defendant to formulate his defence, and that accordingly the particulars should be filed with the writ. This is also the inference to be drawn from the marginal note to section 9 (1) which reads "Accounts under section 7 to be produced when suing in Court". A party 'sues' when he issues his writ. In the Colony a marginal note may be referred to for the purpose of assisting the interpretation of a section (see my judgment in *In re Tan Keng Tin & In re Chop Soon Bee,*[1] followed by McElwaine, C.J. in *Rex v. Cheong Koon Seng,*[2].

There is no local rule corresponding to English Order 3 Rule 10 which provides that when a moneylender sues, various particulars, including those in section 7 (1) of the Ordinance, shall be included in the indorsement to the writ. I do not say that this rule can be applied by virtue of preliminary rule 2 of the Rules of the Supreme Court, 1934, since the English Act and the local Ordinance are not the same, but at

least it suggests that the information must be given on filing the writ so as to enable the defendant to prepare his defence.

When the irregularity is non-compliance with the provisions of statute law, the provisions of Order 63 rule 1 are not applicable (see Annual Practice 1940 p. 1554, note "Dispensing with strictness of Rules"). The applicants are accordingly entitled to have the writ set aside with costs *ex debito justitiae*.

Writ set aside.

[APPELLATE CRIMINAL JURISDICTION]

PEDLOW, J.

January 29, 1941.

TAN AH LEK v. REX.

[SINGAPORE MAGISTRATE'S APPEAL]

Liquors Revenue Ordinance (Cap. 225) S. 28—possession of dutiable liquor—forfeiture of taxi-cab belonging to an innocent third party.

Two men hired a taxi-cab from a public taxi rank and later instructed the driver to drive to a rubber estate where dutiable liquor was loaded into the taxi-cab. One of the passengers alighted whilst the other stayed in the car with the driver who was forced against his will to drive the taxi-cab. The taxi-cab was stopped by Revenue Officers when the dutiable liquor was discovered. Both the passenger and the taxi driver were charged with being in possession or control of dutiable liquor. The passenger pleaded guilty and was convicted. The taxi driver pleaded not guilty but was also convicted and fined. The Magistrate made an order forfeiting the taxi. The taxi driver appealed against his conviction.

Held, that the passenger was at all times in possession or control of the liquor but that there was no evidence at all that the taxi driver was in possession or control of the liquor and that his conviction must be quashed.

Held also, that the Ordinance did not give power to forfeit a motor car belonging to an innocent third party and the order for forfeiture must be set aside.

Semble that Section 83 (1) of the Liquors Revenue Ordinance does not authorise the forfeiture of a motor car to whomsoever it belongs.

MAGISTRATE'S APPEAL.

R. D. W. Edwardes-Ker for Appellant.

C. H. Butterfield (Crown Counsel) for the Crown.

The facts and arguments sufficiently appear from the judgment.

Pedlow J.—The appellant is a taxi-driver. His taxi was stopped on the 17th December, 1940, at Yio Chu Keng Road by Government Monopolies officers. In the taxi was a passenger and the passenger had with him dutiable liquor. The passenger admitted that the liquor was his and that he had hired the taxi. He was convicted of being in possession or control of dutiable liquor. So was the appellant, the taxi-driver and his taxi was forfeited. From this conviction he has appealed.

The conviction in this case rests upon a view of the law taken by the learned Magistrate viz. that, if I hire a taxi-cab from a rank on the public street and enter it with my suit-case and tell the driver to drive me to a railway station, the taxi-driver en route is in possession or control of my suit-case. I know no proposition of law which would support that view.

Stroud's Judicial Dictionary defines "possession" as follows:—

"Possession," qua the Criminal Law and Offences against Property, has been thus defined:—

"A movable thing is said to be in the possession of a person when he is so situated with respect to it that he has the power to deal with it as owner to the exclusion of all other persons, and when the circumstances are such that he may presumed to intend to do so in case of need." With that definition I agree.

It would be absurd and ridiculous to hold that the taxi-driver was in possession or control of my suit-case. The learned Magistrate does not in his very long and very painstaking judgment tell us at any time why he arrived at the conclusion that the accused was in control or possession of the liquor. In fact he says speaking of the appellant:—"His possession or control is consistent with the first accused being its owner." The appellant was the second accused and this means that although you have the owner of the property accompanying it and taking control of it and possessing it in the taxi-cab (as the learned Magistrate himself found on convicting the first accused) yet the taxi-cab driver is also to be deemed to be in possession of it. The learned Magistrate doesn't explain why he is to be so deemed but apparently it is because he was driving the taxi. The matter has only to be stated clearly to show the absurdity of such an assumption. The taxi-driver in obeying the call from the rank that night in Jalan Besar was only carrying out what was his statutory duty and his licence was liable to cancellation if he refused to take a passenger. There was no evidence whatever nor was it even suggested that the taxi-driver knew or suspected the purpose for which the passenger intended ultimately to use the taxi.

As I see this case no facts have been proved which will in any way show that the taxi-driver was in possession or control of this liquor. Even if we disbelieve his story of his intention of going to the Police, even if we assume that he knew that it was liquor and his evidence was that he suspected it was dutiable